

United States Patent Application
DECLARATION IN REISSUE APPLICATION UNDER 37 C.F.R. § 1.175

As a below named inventor I hereby declare that: my residence, post office address and citizenship are as stated below next to my name; that

I verily believe I am the original, first and sole inventor (if only one name is listed below) or a joint inventor (if plural inventors are named below) of the subject matter which is claimed and for which a reissue patent is sought on the invention entitled:
OSCILLATORY CHEST COMPRESSION DEVICE.

The specification of which

- a. ☒ is attached hereto
 b. ☐ was filed on _____, _____ as application serial no. _____ and was amended on _____ (if applicable) (in the case of a PCT-filed application) described and claimed in international no. _____ filed _____ and as amended on _____ (if any), which I have reviewed and for which I solicit a United States patent.

I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information which is material to the patentability of this application in accordance with Title 37, Code of Federal Regulations, § 1.56 (attached hereto).

I believe the original patent to be wholly or partly inoperative or invalid by reason of the patentee claiming more or less than the patentee had a right to claim. One error being relied upon as the basis for reissue is the failure to claim the system as comprising a positive air flow generator, an oscillatory air flow generator, a first feedback and control means, and a second feedback and control means. This is part of my inventive concept but was not claimed. This is claimed in claim 13, added in the reissue application, which claims a system including these elements. Other errors being relied upon are based on the patentee claiming less than the patentee properly had the right to claim.

All errors being corrected in the reissue application up to the time of filing of the declaration under 37 C.F.R. § 1.175 arose without deceptive intention on the part of any or all of the applicants.

I hereby claim foreign priority benefits under Title 35, United States Code, § 119/365 of any foreign application(s) for patent or inventor's certificate listed below and have also identified below any foreign application for patent or inventor's certificate having a filing date before that of the application on the basis of which priority is claimed:

- a. ☒ no such applications have been filed.
 b. ☐ such applications have been filed as follows:

| FOREIGN APPLICATION(S), IF ANY, CLAIMING PRIORITY UNDER 35 USC § 119 | | | |
|--|--------------------|--------------------------------------|-------------------------------------|
| COUNTRY | APPLICATION NUMBER | DATE OF FILING (day, month, year) | DATE OF ISSUE (day, month, year) |
| | | | |
| ALL FOREIGN APPLICATION(S), IF ANY, FILED BEFORE THE PRIORITY APPLICATION(S) | | | |
| COUNTRY | APPLICATION NUMBER | DATE OF FILING (day, month, year) | DATE OF ISSUE (day, month, year) |
| | | | |

I hereby claim the benefit under Title 35, United States Code, § 120/365 of any United States and PCT international application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application in the manner provided by the first paragraph of Title 35, United States Code, § 112, I acknowledge the duty to disclose material information as defined in Title 37, Code of Federal Regulations, § 1.56(a) which occurred between the filing date of the prior application and the national or PCT international filing date of this application.

| U.S. APPLICATION NUMBER | DATE OF FILING (day, month, year) | STATUS (patented, pending, abandoned) |
|-------------------------|-----------------------------------|---------------------------------------|
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I hereby claim the benefit under Title 35, United States Code § 119(e) of any United States provisional application(s) listed below:

| | |
|--|--|
| U.S. PROVISIONAL APPLICATION NUMBER | DATE OF FILING (Day, Month, Year) |
| | |

[illegible]

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

| | | | | |
|----------------------------|----------------------------|--|---------------------------------------|---|
| 2 | Full Name Of Inventor | Family Name Van Brunt | First Given Name Nicholas | Second Given Name P |
| 0 | Residence & Citizenship | City White Bear Lake | State or Foreign Country Minnesota | Country of Citizenship United States |
| 1 | Post Office Address | Post Office Address 1 Bald Eagle Island | City White Bear Lake | State & Zip Code/Country Minnesota 55110/USA |
| Signature of Inventor 201: | | | Date: | |
| | | | 1-11-02 | |
| 2 | Full Name Of Inventor | Family Name Gagne | First Given Name Donald | Second Given Name J. |
| 0 | Residence & Citizenship | City St. Paul | State or Foreign Country Minnesota | Country of Citizenship United States |
| 2 | Post Office Address | Post Office Address 2828 Condit Street | City St. Paul | State & Zip Code/Country Minnesota 55117/USA |
| Signature of Inventor 202: | | | Date: | |
| | | | 1-11-02 | |

§ 1.56 Duty to disclose information material to patentability.

(a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is canceled or withdrawn from consideration, or the application becomes abandoned. Information material to the patentability of a claim that is canceled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§ 1.97(b)-(d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct. The Office encourages applicants to carefully examine:

- (1) prior art cited in search reports of a foreign patent office in a counterpart application, and
- (2) the closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information contained therein is disclosed to the Office.

(b) Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and

- (1) It establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim;
- (2) It refutes, or is inconsistent with, a position the applicant takes in:
 - (i) Opposing an argument of unpatentability relied on by the Office, or
 - (ii) Asserting an argument of patentability.

A prima facie case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.

(c) Individuals associated with the filing or prosecution of a patent application within the meaning of this section are:

- (1) Each inventor named in the application;
- (2) Each attorney or agent who prepares or prosecutes the application; and

(3) Every other person who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor, with the assignee or with anyone to whom there is an obligation to assign the application.

(d) Individuals other than the attorney, agent or inventor may comply with this section by disclosing information to the attorney, agent, or inventor.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: N.P. Van Brunt et al. **Examiner:** D. D. DeMille
Serial No.: To Be Assigned **Group Art Unit:** 3733
Filed: Herewith **Docket:** 12653-13
Due Date: N/A
Reissue of: U.S. Patent No. 6,036,662
Title: OSCILLATORY CHEST COMPRESSION DEVICE

POWER OF ATTORNEY

Attn: BOX REISSUE
 Honorable Commissioner for Patents
 Washington, D.C . 20231

Gentlemen:

The following attorneys are hereby appointed to prosecute the above-identified utility reissue patent application and to transact all business in the Patent and Trademark Office connected therewith:

Berman, C., Reg. 29,249
 Bobys, M.P., Reg. 45,267
 Bosworth, M.K., Reg. 28,186
 Bovasso, L.J., Reg. 24,075
 Boyce, J., Reg. 40,920
 Brown, M.E., Reg. 28,590
 Burton, D.L., Reg. 45,323
 Canter, B., Reg. 34,792
 Chen, A., Reg. P48,508
 Chou, C., Reg. 41,672
 Coleman, B.R., Reg. 39,145
 Cullman, L.C., Reg. 39,645
 Darrow, C., Reg. 30,166
 Diepenbrock III, A.B., Reg. 39,960
 Edwards, W.G., Reg. 44,426
 Farber, M.B., Reg. 32,612

Guernsey, L.B., Reg. 40,008
 Guillot, R.O., Reg. 28,852
 Hamrick, C.A.S., Reg. 22,586
 Hansen, S.R., Reg. 38,486
 Harris, M.D., Reg. 26,690
 Hayden, R.D., Reg. 42,645
 Heyninck, M., Reg. 44,763
 Hickman, P.L., Reg. 28,516
 Howell, S.M., Reg. 45,929
 Hughes, M.J., Reg. 29,077
 Inskeep, J.W., Reg. 33,910
 Jastram, H.D., Reg. 19,777
 Kelley, S.S., Reg. 43,449
 Kennedy, B., Reg. 33,407
 Khan, T., Reg. 46,273
 Kudla, J.P., Reg. P47,724

Larson, D.N., Reg. 29,401
 Lazaris, S.J., Reg. 45,981
 Lervick, C.J., Reg. 35,244
 Lieske, S.C. Reg. 47,749
 MacLean, K.A., Reg. 31,118
 McKinley, D., Reg. 42,867
 McRoss, L., Reg. 40,427
 Morton, C.A., Reg. 44,954
 Nader, R., Reg. P47,260
 Roberts, R.E., Reg. 38,597
 Rose, A. C., Reg. 17,047
 Rosenberg, C., Reg. 31,464
 Sherry, L., Reg. 43,918
 Smith, G.P., Reg. 20,142
 Swinton, B., Reg. P49,050
 Wood, G.B., Reg. 28,133

The Office is requested to correspond with Michael B. Farber, Esq., Oppenheimer Wolff & Donnelly LLP, 2029 Century Park East, 38th Floor, Los Angeles, California 90067-3024 (telephone 310-788-5104; email mfarber@oppenheimer.com).

Advanced Respiratory, Inc.

Date : 1-11, 2001



Nicholas P. Van Brunt

Vice-President for Research and Development,
Advanced Respiratory, Inc.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: N.P. Van Brunt et al. **Examiner:** D. D. DeMille
Serial No.: To Be Assigned **Group Art Unit:** 3733
Filed: Herewith **Docket:** 12653-13
Due Date: N/A
Reissue of: U.S. Patent No. 6,036,662
Title: OSCILLATORY CHEST COMPRESSION DEVICE

CONSENT OF ASSIGNEE TO REISSUE UNDER 37 C.F.R. § 1.172(a) AND
CERTIFICATION UNDER 37 C.F.R. § 3.73(b)

Attn: BOX REISSUE
 Honorable Commissioner for Patents
 Washington, D.C . 20231

Gentlemen:

The assignee of the above-identified patent for which reissue is sought hereby consents to the reissue of the patent. The assignee is Advanced Respiratory, Inc., whose name has been changed from American Biosystems, Inc.

The undersigned, who is the Vice-President for Research and Development of Advanced Respiratory, Inc., hereby states that he has authority to act for the assignee.

The undersigned further certifies that Advanced Respiratory, Inc. is the owner of the patent pursuant to 37 C.F.R. § 3.73(b).

The undersigned declares that he is authorized to execute this Certification on behalf of Advanced Respiratory, Inc., and further declares that all statements made herein of his own knowledge are true and that all statements made on information and belief are believed to be

true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001 and that such willful false statements may jeopardize the validity of the application, any patent issued thereon, or any patent to which declaration is directed.

1. The inventors, Nicholas P. Van Brunt and Donald J. Gagne, assigned U.S. Pat. No. 6,036,662 to American Biosystems, Inc., as evidenced by the Assignment recorded in the Assignment Branch on March 16, 1998 at Reel 9048, Frame 0132.

2. Subsequent to the Assignment, American Biosystems, Inc. changed its name to Advanced Respiratory, Inc.

3. Advanced Respiratory, Inc. is the effective owner and real party in interest of the above-identified United States patent for which reissue is sought.

Advanced Respiratory, Inc.

Date : 1-11, 2001



Nicholas P. Van Brunt

Vice-President for Research and Development,
Advanced Respiratory, Inc.